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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,823	12/01/2003	Ning-Sun Yang	08919-080001	3608
26161	7590	11/20/2006		EXAMINER
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				LEITH, PATRICIA A
			ART UNIT	PAPER NUMBER
			1655	

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

10/725, 823



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT PAPER

20061110

DATE MAILED:

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Commissioner for Patents

The reply filed on 9/5/06 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Newly submitted claims 46-60 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 46-60 are directed toward an independent invention from which was originally claimed because Applicant is claiming a different product than originally claimed. The newly submitted claims do not further limit previously considered claim 1 (now cancelled) but rather change the composition physically. The limitations set forth in claims 46 and 50 are prepared differently and therefore would have different inherent phytochemicals and subsequently would have a different effect when administered to an individual. The percentages as written in the claims are not merely percentages of an amount of a substance which could be further limited to support patentability; e.g., Substance A is present at 10-40% could be further amended to read – Substance A is present at 20-30% which would narrow the claim. On the contrary, the percentages in the claims are suggesting a new physical characteristic of the composition of the claim, and not merely amounts of the composition. The search for the inventions are not co-extensive since each product is different and the method steps for obtaining the distinct compositions would be a burden on the examiner. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 46-60 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

See 37 CFR 1.111. Since the above-mentioned reply appears to be bona fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia Leith whose telephone number is (571) 272-0968. The examiner can normally be reached on Monday - Friday 8:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Terry A. McKelvey

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Patricia Leith
Primary Examiner
Art Unit: 1655